

REMARKS/ARGUMENTS

This Response is being filed in response to the outstanding Final Rejection, dated August 29, 2007, to which Applicant was given a three-month period to reply. Accordingly, the present response is being timely filed. In addition, because this Response is being filed within 2-months of the date of the Final Rejection, the shortened statutory period for calculating extension fees should expire at 3-months from the date of the Final Rejection or on the date an advisory action is mailed, whichever is later. Claims 1-23, and 25 are presently pending in the application. No amendments have been made to the claims in this Response. Claims 1 and 25 are independent.

In light of the following arguments, Applicants respectfully request that the Examiner allow all of the currently pending claims; but, if the Examiner believes a new search is necessary, Applicants request that the case be removed from final prior to the three (3) month response date for the outstanding Final Rejection.

Basis of Rejection

In the Office Action, the Examiner rejected claims 1-6, 12, 17-23, and 25 under 35 U.S.C. §103 as being unpatentable over Preissman et al., USP 6,019,776, in view of Swindle, USP 5,893,865. The Preissman and Swindle references are being cited for the first time.

Specifically, in rejecting independent claims 1 and 25, the Examiner asserted that Preissman disclosed all of the elements of independent claims 1 and 25, including first and second bevels, except that Preissman failed to teach that a tip having a plurality of facets wherein the tip has a first cross-section having a first area greater than a second cross-section having a second area situated between the first location and proximal end of the probe shaft. Nevertheless, the Examiner cites Swindle as teaching use of a tip that has such characteristics. Rejection p.3.

With respect to claims 7-11, and 18-21, the Examiner further cites Gelpke, USP 1,852,296, as teaching a plurality of surfaces aligned with the longitudinal axis.

Response to Rejection

1. Neither Preissman, Swindle, nor Gelpke teaches or suggests first and second bevels formed in the tubular shaft of the claimed surgical instrument.

Independent claims 1 and 25 each require that the shaft of the claimed surgical instrument include first and second bevels of varying degree relative to the longitudinal axis. Specifically, Applicants claim “a first bevel located at a first position adjacent to the distal end of the tubular shaft of the probe sleeve and extending towards the proximal end at a first angle relative to the first longitudinal axis” and “a second bevel located at a second position adjacent to the first position and extending towards the proximal end of the probe sleeve at a second angle relative to the first longitudinal axis.” See claims 1 and 25.

The claimed elements of having first and second bevels formed in the shaft of the surgical instrument in addition to the facets of a tip formed on a distal end of the shaft is neither taught nor suggested by Preissman, Swindle, or Gelpke, or any combination thereof. In particular, Preissman depicts a shaft of a surgical instrument (i.e., tubular structure 11) having a circular cross-section without any bevels formed in its surface, except for a beveled distal end 12. (See FIG. 1 of Preissman). Beveled distal end 12 is the only beveled surface taught or suggested by Preissman.

In forming the present rejection of claims 1-23, and 25, the Examiner erroneously cites to bevel 12 of Preissman twice as teaching both the first and second bevels of claims of the present claims. However, as can be seen in FIG. 1 of Preissman, bevel 12 is only a single bevel formed at the distal end of tubular structure 11. In addition, the surface of bevel 12 of

Preissman forms only a single angle relative to the longitudinal axis of tubular structure 11. Thus, in contrast to the present claims, Preissman fails to teach or suggest at least two beveled surfaces, which form first and second angles relative to a longitudinal axis of the tubular shaft of the probe sleeve. For example, in the present application, as shown in FIGS. 2A-C, by way of non-limiting example, various views of a probe sleeve 10 having at least two beveled surfaces 13 and 16 are shown. Preissman fails to disclose these first and second bevels and, thus, the combination of Preissman, Swindle, and Gelpcke also fails to render the surgical instrument of claims 1-23, and 25 obvious.

Swindle also fails to teach or suggest first and second bevels formed in the shaft of the surgical instrument. The shaft 52 of Swindle has a circular cross-section. Thus, Swindle makes no teaching or suggestion, and provides no motivation, to modify the its shaft to include first and second bevels formed in the shaft. In light of the arguments made herein, Applicants do not presently address the Examiner's contention that Swindle discloses a tip with the characteristics set forth in claims 1-23, and 25. No waiver of any arguments should be assumed therefrom.

Finally, the Examiner maintains the contention that Gelpcke teaches "a plurality of surfaces aligned with the longitudinal axis for preventing the shaft from turning inside a bore." Rejection at p. 4. Nevertheless, Gelpcke fails to teach or suggest the first and second bevels formed in the shaft of the surgical instrument as set forth in independent claims 1 and 25. Specifically, the surfaces of Gelpcke are not bevels as they are parallel to the longitudinal axis of the tool of Gelpcke and do not extend at an angle relative to the longitudinal axis. As such, Gelpcke does not disclose the bevels of independent claims 1 and 25. Further, Applicants maintain their prior argument that the disclosure of Gelpcke is far afield and non-analogous to

the field of the present application and thus is not properly combined with Preissman or Swindle as medical instruments.

Conclusion

In light of the above arguments, neither independent claims 1 and 25, nor any claim depending therefrom, is rendered obvious by the Examiner's proposed combination of Preissman, Swindle, and Gelpcke. Thus, Applicants respectfully request that the Examiner reconsider this application with a view towards allowance. In light of the present application being under Final Rejection, the Examiner is invited to call the undersigned attorney if such a telephone call would help resolve any remaining issues.

The failure to discuss any prior argument in this Response should not be deemed a waiver of such arguments.

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Respectfully submitted,

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